U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE [redacted] Office: Vermont Service Center Date: 11 DEC 2001

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(9)(A)(iii)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who entered the United States unlawfully on September 19, 1999. On October 25, 2000, he was found to be subject to removal by an immigration judge *in absentia* under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(A)(i), as an alien who is present in the United States without a lawful admission or parole. Therefore he is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. 1182(a)(9)(A)(ii). The applicant has failed to depart. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. 1182(a)(9)(A)(iii), to remain in the United States.

The director determined that the unfavorable factors outweighed the favorable ones and denied the application accordingly.

On the appeal, filed on March 22, 2001, the applicant requested time to retain an attorney. More than eight months have elapsed since the appeal was filed and no new information has been received for the record. Therefore, a decision will be entered based on the present record.

Section 212(a)(6)(A)(i) of the Act, 8 U.S.C. 1182(a)(6)(A) provides that:

> An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

In summary the new statute at 212(a)(6)(A) of the Act which took effect on April 1, 1997, provides the following:

> (1) an alien who is unlawfully present in the United States without a lawful admission or parole is inadmissible under section 212(a)(6)(A) of the Act and there is no waiver available. There is an exception for battered aliens. Such an alien cannot seek adjustment of status except for certain aliens eligible under section 245(i) of the Act.
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> Aliens who entered the United States without inspection, who **have not departed** and have an application pending adjudication on or after April 1, 1997, are subject to the provisions of section 212(a)(6)(A) of the Act. Except as otherwise required by law, this ground of inadmissibility applies at the time of any other administrative determination regarding admissibility, including but not limited to the issuance of a visa, inspection of an alien at a port or entry, disposition of an application for admission by an inspector or an

> immigration judge or adjudication of an application for adjustment of status. Section 212(a)(6)(A) ground of inadmissibility applies to any alien present in the United States without having been admitted or paroled.

Section 212(a)(6)(A) of the Act applies to any alien present in the United States without having been admitted or paroled, but it does not apply to applications for admission or adjustment of status adjudicated by an immigration judge in deportation or exclusion proceedings commenced prior to April 1, 1997.

The alien in the matter was present in the United States without a lawful admission or parole in September 1999 (entered without inspection). He was ordered removed in October 2000, has not departed and has an application pending adjudication on or after April 1, 1997. Therefore, he is subject to the provisions of section 212(a)(6)(A) of the Act, and there is no relief for such ground of inadmissibility. The applicant is statutorily ineligible for relief, and the appeal will be dismissed.

ORDER: The appeal is dismissed.